

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD
SPECIAL CIVIL APPLICATION No. 12099 of 1994

For Approval and Signature:

HONOURABLE MR.JUSTICE R.S.GARG

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1 Whether Reporters of Local Papers may be allowed
to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy
of the judgment ?

4 Whether this case involves a substantial question
of law as to the interpretation of the
constitution of India, 1950 or any order made
thereunder ?

5 Whether it is to be circulated to the civil judge
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AJABHAI LAXMANBHAI CHAVADA - Petitioner(s)

Versus

STATE OF GUJARAT & 1 - Respondent(s)

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Appearance :

MR JR NANAVATI WITH MR SK PATEL for Petitioner.

MR LR PUJARI AGP for Respondents No.1 to 3.

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CORAM : HONOURABLE MR.JUSTICE R.S.GARG

Date : 19/12/2006

ORAL JUDGMENT

1. Shri J.R. Nanavati, learned senior counsel with Mr.S.K. Patel, learned counsel for the petitioner and Mr.L.R.

Pujari, learned Assistant Government Pleader for the respondents – State.

2. The parties are heard.

3. Somewhere in the year 1976, proceedings under Agricultural Lands (Ceiling) Act were initiated against the petitioner by the Mamlatdar, Sami. He made a final order on 25/4/1977 declaring that the petitioner was possessed of some excess land. An appeal was filed against the said order, the matter went to the Tribunal, there were some remands or suo-motu review, review, remand and so on, finally the Gujarat Revenue Tribunal remanded the matter to the Mamlatdar-cum-Agricultural Lands Tribunal to look into the defence of the petitioner that there was a customary divorce between the petitioner and his wife and in lieu of the maintenance, certain agricultural lands were given to the wife and the daughter. The Tribunal allowed the parties to lead the evidence. The parties accordingly led the evidence. The Tribunal held that there was a customary divorce and in view of the said divorce, the land belonging to Smt.Laxmiben could not be clubbed with the land possessed by the petitioner. The matter was taken in suo-motu revision by the Deputy Collector, after hearing the petitioner, he observed that if

a document of divorce was executed between the parties, oral evidence could not be looked into and the burden was upon the petitioner to produce the original document. The petitioner, took up the matter before the Gujarat Revenue Tribunal, but having failed before the said authority, is before this Court.

4. Shri J.R. Nanavati, learned counsel for the petitioner submits that on an earlier occasion, the said document was produced before the court and the Deputy Collector had observed in Ceiling/Appeal/44/77 that the document was produced and was available in the records. He submits that if the said document is not available in the records or has been lost in transit or when it was in the custody of the court, the petitioner cannot be allowed to suffer because of the lapses committed by the authorities of the State. He submits that the Revenue Tribunal had remanded the matter to the Mamlatdar with the direction to consider the effect of the customary divorce, the same was considered but the appellate / revisional authority (Deputy Collector) held that the oral evidence could not be looked into.
5. The submission of Shri Nanavati, learned counsel for the petitioner is that as the order passed by the Deputy

Collector and confirmed by the Revenue Tribunal are contrary to the order of remand made by the Revenue Tribunal and are also contrary to the records, the same cannot be allowed to stand.

6. Shri L.R. Pujari, learned Assistant Government Pleader for the respondents State, on the other hand, submits that the question of admissibility of the oral evidence was not considered by the Mamlatdar-cum-A.L.T. and he also did not consider the question of non-production of the document. According to him, if the document could not be produced or it was lost or if it was produced but now was not traceable, then too, the Agricultural Lands Tribunal would be required to record a finding that there did exist a document, it was produced or not and if it was produced, the same is traceable or not and only if the the Agricultural Lands Tribunal comes to the conclusion that the document now cannot be produced because either it is lost or is not traceable, then only, the oral evidence would be allowed to be taken into consideration.
7. After hearing the learned counsel for the parties and on going through the observations made by the Deputy Collector and the Mamlatdar that the document was produced in the records and that the same is not

traceable, I am of the opinion that the question will have to be reconsidered by the Mamlatdar-cum-A.L.T. that whether the document is lost for all practical purposes or can the document be traced and if the document cannot be traced or cannot be produced before the authority, then to what extent the oral evidence can be relied upon.

8. As this question, which has material bearing on the rights of the parties, has not been considered in its true perspective by the Mamlatdar-cum-A.L.T., nor has been taken into proper consideration by the Deputy collector and the Gujarat Revenue Tribunal, I must set aside all the three impugned orders and remand the matter back to the Mamlatdar-cum-A.L.T. The petition is allowed, but, however, with the following directions;

- (i) The parties shall appear before the Mamlatdar-cum-A.L.T. on 30/1/2007. No further notice would be required to either of the parties.
- (ii) If the parties propose to lead any further evidence, they would be free to do so, but, however, will have to make an application to the Mamlatdar-cum-A.L.T. that they be given an opportunity to lead evidence.
- (iii) The Mamlatdar-cum-A.L.T., after giving an opportunity of

leading evidence and after hearing the parties, shall decide the matter in accordance with law, it will first decide that whether there did exist the document, whether the document was produced before the authorities, whether the document is traceable or not and whether it can be produced before the authorities or not. If it comes to the conclusion that the document is now not traceable, nor it can be produced, then, it shall proceed to decide the case on the strength of the oral evidence and shall decide that whether there was a customary divorce and whether the property in possession of Laxmiben alleged to be divorcee could be clubbed with agricultural land belonging to the petitioner. It is further directed that the whole exercise will have to be completed by the Mamlatdar-cum-A.L.T. within a period of six months from the date of appearance of the parties.

9. The petition is allowed to the extent indicated above. No costs.

(R.S. GARG, J.)

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